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7	E-mail: Judith.Loach@doj.ca.gov Attorneys for Complainant		
8	BEFORE THE BOARD OF REGISTERED NURSING		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	STATE OF C		
11	In the Matter of the Accusation Against:	Case No. 2010-307	
12	TRACY LEE POWELL		
13	4362 Fairlands Drive	ACCUSATION	
14	Pleasanton, California 94588		
15	Registered Nurse License No. 559653		
16	Respondent.		
17		•	
18	Complainant alleges:		
19	<u>PARTIES</u>		
20	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her		
21	official capacity as the Interim Executive Officer	of the Board of Registered Nursing, Department	
22	of Consumer Affairs.		
23	2. On or about September 8, 1999, the Board of Registered Nursing issued Registered		
24	Nursing License Number 559653 to Tracy Lee Powell ("Respondent"). The Registered Nursing		
25	License was in full force an effect at all times relevant to the charges brought herein and will		
26	expire on June 30, 2011, unless renewed.		
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		1	

Accusation

JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 provides, in relevant part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY AND REGULATORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."
 - 7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, . . . or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that

such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

8. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

- 10. On December 7, 2007, the San Ramon Police Department received a report that Respondent was driving her vehicle in an erratic manner. Upon contact with the police, Respondent failed field sobriety testing used at the scene to determine if she was intoxicated. A preliminary alcohol screening test reported Respondent's blood alcohol to be 0.25%, with 0.08% being the legal limit for a misdemeanor charge of driving while intoxicated.
- 11. On or about June 11, 2008, in a criminal proceeding entitled *The People of the State of California v. Tracy Lee Powell*, Contra Costa Superior Court, Case Number 136581-6, Respondent was convicted by her plea of no contest to a violation of Vehicle Code section 23152, subdivision (b) [driving while having a 0.08% or higher blood alcohol], a misdemeanor.

- 12. In the same criminal proceeding, Respondent also entered into a plea of no contest to a violation of Vehicle Code sections 23538 (b)(2) and 23556(b)(4) [driving with a blood alcohol level of 0.20% or more], an enhancement to her plea of no contest to violating Vehicle Code section 23152, subdivision (b).
- 13. As part of her plea's of no contest in the aforementioned criminal action, Respondent was placed on 3 years court probation; ordered to serve 2 days in county jail; pay a fine of \$1771.00; and complete a 9 month First Offender Drinking Driver's Program.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under Code section 2761(a) and 2762(b), in that she drove a vehicle with an illegal blood alcohol concentration that presented a risk to herself and to the public as set forth in paragraphs 10 through 13, above.

SECOND CAUSE FOR DISCIPLINE

(Criminal Conviction)

15. Respondent is subject to disciplinary action under Code sections 2761(f), 2762(b), 2762(c), and/or 490 in that on or about June 11, 2008, in a criminal proceeding entitled *The People of the State of California v. Tracy Lee Powell*, Contra Costa Superior Court, Case Number 136581-6, Respondent was convicted by her plea of no contest to a violation of Vehicle Code sections 23152, subdivision (b), 23538(b)(2) and 23556(b)(4) as set forth in paragraphs 11 through 13, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse Number 559653, issued to Tracy Lee Powell.
- 2. Ordering Tracy Lee Powell to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1	3. Taking such other and further action as deemed necessary and proper.		
2	DATED:	12/24/09	Louise L. Bailey.
3		,	LOUISE R. BAILEY, M.ED., RM Interim Executive Officer Board of Registered Nursing
4			Department of Consumer Affairs State of California
5			Complainant
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